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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2008-410

MICHAEL JOHN NORTON
371 Oak Avenue
Carlsbad, CA 92008

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 20, 2008, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from Michael John Norton (Respondent). On or about June 18, 2008, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on January 5, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...."

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"...."

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1 “(g) Conviction of a violation of any of the provisions of this chapter or of
2 any provision of Division 2 (commencing with Section 500), or violating, or
3 attempting to violate, directly or indirectly, or assisting in or abetting the violation
4 of, or conspiring to violate any provision or term of this chapter or of any provision
5 of Division 2 (commencing with Section 500).

6 “....”

7 8. Section 3752 of the Code states:

8 “A plea or verdict of guilty or a conviction following a plea of nolo
9 contendere made to a charge of any offense which substantially relates to the
10 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
11 a conviction within the meaning of this article. The board shall order the license
12 suspended or revoked, or may decline to issue a license, when the time for appeal
13 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
14 order granting probation is made suspending the imposition of sentence,
15 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
16 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
17 setting aside the verdict of guilty, or dismissing the accusation, information, or
18 indictment.”

19 9. California Code of Regulations, title 16, section 1399.370, states:

20 “For the purposes of denial, suspension, or revocation of a license, a crime
21 or act shall be considered to be substantially related to the qualifications, functions
22 or duties of a respiratory care practitioner, if it evidences present or potential
23 unfitness of a licensee to perform the functions authorized by his or her license or
24 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
25 acts shall include but not be limited to those involving the following:

26 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
27 abetting the violation of or conspiring to violate any provision or term of the Act.

28 “....”

1 “(c) Conviction of a crime involving driving under the influence or reckless
2 driving while under the influence.

3 “....”

4 COST RECOVERY

5 10. Section 3753.5, subdivision (a) of the Code states:

6 "In any order issued in resolution of a disciplinary proceeding before the
7 board, the board or the administrative law judge may direct any practitioner or applicant
8 found to have committed a violation or violations of law to pay to the board a sum not to
9 exceed the costs of the investigation and prosecution of the case."

10 11. Section 3753.7 of the Code states:

11 "For purposes of the Respiratory Care Practice Act, costs of prosecution
12 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
13 other administrative, filing, and service fees."

14 12. Section 3753.1 of the Code states:

15 "(a) An administrative disciplinary decision imposing terms of probation
16 may include, among other things, a requirement that the licensee-probationer pay the
17 monetary costs associated with monitoring the probation."

18 CAUSE FOR DENIAL OF APPLICATION

19 **(Conviction of Crimes)**

20 13. Respondent's application is subject to denial under sections 3732,
21 3750, subdivision (d), of the Code, and California Code of Regulations, title 16, section
22 1399.370, subdivisions (a) and (c), in that he was convicted of crimes substantially related
23 to the qualifications, functions, and/or duties of a respiratory care practitioner. The
24 circumstances are as follows:

25 July 22, 1998, Conviction

26 (a) On or about June 10, 1998, a Complaint was filed in the Municipal
27 Court of the State of California, for the County of San Diego, case number CN081411,
28 charging respondent with contributing to the delinquency of a minor [Pen. Code § 272],

1 and permitting a minor to consume alcohol in an on-sale premises [Business & Professions
2 Code § 25658, subdivision (c)], both misdemeanors.

3 (b) On or about July 22, 1998, pursuant to a plea bargain, respondent
4 pled guilty to disturbance by loud noise in violation of Penal Code section 415(2).
5 Respondent was ordered to pay various fines and fees.

6 **July 10, 2000, Conviction**

7 (c) On or about May 11, 2000, a Complaint was filed in the Superior
8 Court of the State of California, for the County of San Diego, case number CN113218,
9 charging respondent with driving under the influence or alcohol and/or drugs in violation
10 of Vehicle Code section 23152, subdivision (a), and driving with a blood alcohol of .08
11 percent or higher in violation of Vehicle code section 23152, subdivision (b). It was
12 further alleged that respondent had a blood alcohol of .20 percent or more within the
13 meaning of Vehicle Code section 23578.

14 (d) On or about July 10, 2000, pursuant to a plea bargain, respondent
15 pled guilty to violating Vehicle Code section 23152, subdivision (b). Imposition of
16 sentence was suspended and respondent was placed on 3 years probation, ordered to
17 complete a 4 day work alternate program, enroll and complete a first offender drug
18 program, attend Mother's Against Drunk Driving, pay fines and restitution, and his
19 driver's license was restricted for 3 months. Respondent further admitted that he had been
20 driving with a blood alcohol level of .22 percent at the time of his arrest.

21 **September 3, 2008, Conviction**

22 (e) On or about June 9, 2007, respondent was arrested by officers from
23 the Chula Vista Police Department after they received a call stating that respondent was
24 drunk at a gas station and preparing to drive away. Upon arrival, officers observed
25 respondent stumbling to his vehicle. Due to his condition, officers were unable to
26 administer Field Sobriety Tests.

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1 (e) On or about August 14, 2007, a Complaint was filed in the Superior
2 Court of the State of California, for the County of San Diego, case number S212999,
3 charging respondent with driving under the influence of alcohol and/or drugs and having
4 sustained a prior driving under the influence conviction [Vehicle Code §§ 23152,
5 subdivision (a), 23540, 23578] and driving with a blood alcohol of .08 percent or higher
6 and having sustained a prior driving under the influence conviction [Vehicle Code §§
7 23152, subdivision (b), 23540, 23578].

8 (f) On or about September 3, 2008, pursuant to a plea bargain,
9 respondent pled guilty to violating Vehicle Code sections 23152, subdivision (a), and
10 admitted the special allegations pursuant to Vehicle Code sections 23540 and 23578 .
11 Respondent was sentenced to 96 hours in county jail and placed on 5 years summary
12 probation, ordered to complete a public service program for 30 days, complete a multiple
13 alcohol/drug program, attend Mother's Against Drunk Driving, and pay fines and fees.
14 Respondent further admitted he had been driving with a blood alcohol level of .37 percent.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of Michael John Norton for a Respiratory Care Practitioner License;
2. Directing Michael John Norton to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: March 9, 2009

Original signed by Colleen Whitestine for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant